2002 ENVIRONMENTAL NEGOTIATIONS COMPETITION
CONFIDENTIAL INSTRUCTIONS FOR MENDOZA DAIRY ATTORNEYS
ROUND 1

Mendoza is in a difficult position. Under CEQA, it is the County that makes the decision whether to proceed by an EIR or a negative declaration. Mendoza has input into the decision, but cannot control it. Mendoza's bank loan approval will expire before an EIR can be completed. Mendoza believes that its proposed dairy will be quite profitable, so it is willing to spend some money up front if it will allow the dairy to proceed.

Mendoza recognizes that in order to proceed without a full EIR, it must agree to do a series of studies, including air, water, biological, waste, and cumulative impacts. Mendoza is prepared to fund those studies and to be flexible on which consultants do the studies. Mendoza, for example, could propose three or four consultants for each or a series of the studies, and ORCA could choose which consultant would proceed. Alternatively, Mendoza would be willing to review ORCA suggestions for consultants. Mendoza, however, must have some control over the scope and cost of the studies. Mendoza believes that can be addressed through a short-turn-around RFP (request for proposal) process, in which Mendoza and ORCA will both have some input, with Mendoza having the final say.

The bigger problem for Mendoza is what to do about any impacts identified by the study. Mendoza cannot sign a blank check and cannot agree to mitigation measures that put it at a competitive disadvantage with other dairies. Mendoza is willing to agree to a combination of state of the art facilities, such as for the waste lagoons, and a process for evaluation and negotiation for any mitigation identified by the studies. Mendoza cannot, for example, agree, sight unseen, to mitigation for cumulative impacts. Mendoza believes that if it can get an agreement from ORCA that the dairy can proceed simultaneously with the studies, and that it will work with ORCA to institute reasonable and appropriate mitigation identified by the studies, that should be sufficient. Mendoza recognizes, however, that obtaining agreement to proceed with the dairy before completion of the studies would be a large concession by ORCA and very valuable to Mendoza. Mendoza will give as much assurance on mitigation as possible without committing to signing a blank check.

Mendoza is willing to do a worker health and safety impact study, pursuant to parameters determined by Mendoza (with some, but limited input from ORCA), but will not agree to any mitigation or any process for evaluating mitigation for these impacts. Mendoza does not believe that worker safety studies are part of the CEQA process, and believes that its proposal goes above and beyond its obligations. *See* 14 C.C.R. §§ 15125-31.

In order to get over the hump on the EIR issue, Mendoza has proposed giving ORCA a $300,000 grant to use as it sees fit for studies of dairy related issues in the County. Mendoza insists that the money cannot be used for attorney fees, now or in the future. Mendoza is prepared to offer up to $375,000, and to allow up to $25,000 of the total to be used as "cost reimbursement" by ORCA's counsel. Mendoza dislikes ORCA's counsel and does not want to pay fees; Mendoza also knows that pitting the organization against the attorneys could cause trouble for ORCA. *See, e.g., Evans v. Jeff D.*, 475 U.S. 717 (1986). If fees are the only issue remaining between the parties, Mendoza will, if it must, agree to $25,000 in fees and $20,000 in costs, but if any fees are explicitly paid, Mendoza will limit its total payment to ORCA to $300,000.

On behalf of Mendoza, you should be prepared to make the initial proposal to set the negotiation in motion. Your proposal should include something forth each of the five elements set for in the text (consultants, mitigation, worker health study, grant to ORCA, attorneys fees).